

REMARKS

Claims 1-20 are pending in this application. The Advisory Action indicates that Applicants' reply and terminal disclaimers filed May 3, 2004 overcame the obviousness-type double-patenting rejections and the rejections under 35 U.S.C. §112, first paragraph. Claims 1-6 and 9-10 remain rejected under 35 U.S.C. § 103 and claims 7 and 8 were objected to.

By this amendment, claims 1-3, 5, 6, and 9 have been canceled and claims 4, 7, and 10 have been amended without prejudice or disclaimer of any previously claimed subject matter. Support for the amendments can be found, *inter alia*, throughout the specification and in the claims as originally filed.

The amendments are made solely to promote prosecution without prejudice or disclaimer of any previously claimed subject matter. With respect to all amendments and cancelled claims, Applicants have not dedicated or abandoned any unclaimed subject matter and moreover have not acquiesced to any rejections and/or objections made by the Patent Office. Applicants expressly reserve the right to pursue prosecution of any presently excluded subject matter or claim embodiments in one or more future continuation and/or divisional application(s).

Applicants have carefully considered the points raised in the Advisory Action and Final Office Action and believe that the Examiner's concerns have been addressed as described herein, thereby placing this case into condition for allowance.

Rejections under 35 U.S.C. §103

Claims 1-6 and 9-10 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Vincent (U.S. Pat. No. 5,422,362) in view of Gonschior *et al.* (*Photochemistry and Photobiology*, 1996; 64:758-763) and Harrison (*Harrison's Principle of Internal Medicine*, 13th ed., 1994, page 986). Applicants respectfully traverse this rejection.

Applicants continue to traverse this ground for rejection for the reasons of record. However, in order to expedite prosecution, the claims have herein been amended to recite a method

wherein the photosensitizer is a green porphyrin. Claim 7 is directed to a method wherein the photosensitizer is a green porphyrin and is not subject to this rejection. Applicants note the Examiner's acknowledgement of claims 7 and 8 as free of prior art on page 2 of the final Office Action, mailed December 3, 2003.

Accordingly, Applicants submit that this rejection is now moot and may be properly withdrawn, which is respectfully requested.

Claim Objections

The Advisory Action indicates that claims 7 and 8 were objected to. Applicants assume that the objections are due to claims 7 and 8 being ultimately dependent from rejected claim 1. As amended herein, claim 7 has been re-presented as an independent claim. Accordingly, Applicants respectfully request reconsideration and withdrawal of the objection to claims 7 and 8.

CONCLUSION

Applicants believe that all the outstanding issues raised in this application have been properly addressed in this response. Accordingly, reconsideration and allowance of the pending claims is respectfully requested. If the Examiner feels that a telephone interview would serve to facilitate resolution of any outstanding issues, the Examiner is encouraged to contact Applicants' representative at the telephone number below.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 273012012200. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: January 3, 2004

Respectfully submitted,

By Karen R. Zachow
Karen R. Zachow, Ph.D.
Registration No.: 46,332
MORRISON & FOERSTER LLP
3811 Valley Centre Drive, Suite 500
San Diego, California 92130
(858) 720-5191